

# WIC Food Packages....Time for a Change

## Frequently Asked Questions

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### **How are the provisions in the interim rule different from those in the proposed rule?**

Certain modifications were made based on public comment and further review and determination by FNS. Among the modifications, the interim rule:

- Increases fruit and vegetable vouchers to \$10 for fully breastfeeding women
- Commits to an annual adjustment of the value of the fruit and vegetable vouchers for inflation.
- Requires State agencies to allow participants to use their cash value vouchers to purchase any WIC–eligible fruits and vegetables.
- Allows State agencies the option of providing some (not more than 1 can) infant formula to a breastfeeding mother, on an individual basis, during the infant’s first month.
- Adds to the definition of whole grain that the primary ingredient by weight must be a whole grain.
- Requires that at least one half of the total number of breakfast cereals on the State’s authorized food list meet the whole grain requirement.
- Allows State agencies to submit proposals for cultural food substitutions.
- Allows infants to receive WIC-eligible medical foods.
- Extends the implementation timeframe to 18 months for all provisions.
- Eliminates provision for “pilot” of partially breastfeeding packages.

### **How does an interim rule differ from a final rule?**

An interim rule has the full force and effect of a final rule yet allows the Department to obtain feedback on the provisions while implementation goes forward.

### **How long is the interim rule comment period?**

The interim final rule comment period ends on February 1, 2010, which is 180 days after the implementation deadline. The comment period is long enough to allow comments based on actual implementation of the requirements.

### **What happens after the interim rule comment period closes?**

An analysis of the comments received is prepared and a final rule is developed

**When will State agencies implement the new food packages?**

State agencies must be in compliance with the new provisions no later than August 5, 2009.

**What are the consequences for State agencies that do not meet the implementation deadline?**

State agencies that do not meet the implementation deadline will be considered out of compliance with Federal regulations. Nutrition Services and Administration funding could be withheld until State agencies come into compliance.

**Is funding available to State agencies for implementation of the changes?**

State agencies are expected to use routinely available funding sources, such as Nutrition Services and Administration funds, to implement the new food packages.

**Can States agencies make incremental changes to the food packages (i.e., add bread and grains one year, add soy beverage another year)?**

No. During the 18-month phase-in period, State agencies are required to issue food benefits based on either the new food packages or current food packages but may not combine the two. For example, a State agency may not add whole wheat bread and fresh fruits and vegetables to the current foods and quantities available under the children's food package. The State agency may, however, phase-in the new food packages on a participant category basis. To minimize participant and vendor confusion, once the State agency begins issuing the new food packages, it must be done on a Statewide basis.

**When will the new foods be available for participants?**

The changes will be phased in between February 2008 and August 2009 by WIC State agencies. State agencies will determine their specific implementation timeframe of the new food packages based on the State assessment of changes required to its management information system, the training needs of staff, vendors and participants, and development of a new State food list.

**Does the cost neutral requirement apply to States when they implement the food package changes?**

USDA was required to develop new food packages that were relatively cost neutral. WIC State agencies receive an annual grant that they must operate within while complying with program requirements. As such, each WIC State agency must determine how it will implement the new packages within its grant level.

### **How do the new WIC food packages reflect the recommendations of the Institute of Medicine (IOM)?**

The new WIC food packages largely reflect the recommendations of the IOM, with certain cost adjustments determined necessary by the Department to maintain cost neutrality.

**How do the new food packages provide greater consistency with the Dietary Guidelines for Americans?** The new WIC food packages include fruits and vegetables, and whole grains for the first time. Reductions are made to the amounts of certain foods (milk, juice, eggs) to be more consistent with recommendations in the Dietary Guidelines for Americans and WIC's role as a supplemental nutrition program.

**How do the new food packages provide greater consistency with infant feeding practice guidelines?** Under the new food packages, the introduction of complementary foods is delayed from four to six months of age and infant formula amounts are modified. Infant foods are added and juice eliminated in the packages for older infants in order to promote healthy dietary patterns.

**How do the new food packages address public health nutrition-related issues?** The revised food packages for women and children provide less saturated fat and cholesterol, more fiber, and fruits and vegetables. The food packages for breastfeeding infant-mother pairs provide stronger incentives for continued breastfeeding, including providing less formula to partially breastfed infants and additional quantities and types of food for breastfeeding mothers.

**How do the new food packages reinforce the nutrition education messages provided to participants?** The new food packages are more consistent with the nutrition education messages provided to participants, i.e., --“eat more fruits and vegetables”; “lower saturated fat”; “increase whole grains and fiber; drink less sweetened beverages and juice; “babies are meant to be breastfed.”

**How do the new food packages appeal to WIC's culturally diverse populations?** The new food packages provide more participant choice and a wider variety of foods than the previous food packages. Foods such as tortillas, brown rice, soy-based beverage, canned salmon, and a wide choice of fruits and vegetables will provide State agencies increased flexibility in prescribing culturally appropriate food packages.

### **How do the new food packages support breastfeeding?**

The new food packages for breastfeeding infant-mother pairs are revised to provide stronger incentives for continued breastfeeding. For example, the new food package for fully breastfeeding women provides greater amounts of foods, including a higher dollar value for fruits and vegetables. Fully breastfeeding infants receive baby food meats in addition to greater amounts of baby food fruits and vegetables. Less infant formula is provided to partially breastfeeding infants so that they may receive the benefits of breastmilk. A minimal amount of infant formula is provided to partially breastfeeding infants in the first month after birth in order to help mothers build and maintain their milk supply.

**Why are some foods, i.e., dairy, juice, eggs, reduced in the new WIC food packages?**

Reductions are made to the amounts of certain foods (milk, juice, eggs) to be more consistent with recommendations in the Dietary Guidelines for Americans and WIC's role as a supplemental nutrition program.

**Why are the amounts of infant formula reduced in some food packages?**

Infant formula amounts are reduced to reflect the nutrition needs of infants at different ages and feeding methods (breastfed versus formula fed). Infant formula for infants 6 -12 months of age is replaced by baby foods—fruits, vegetables, meats.

**Why is medical documentation required for children to receive soy-based beverage?**

Requiring medical documentation ensures that a child's medical provider is aware that the child may be at nutritional risk when milk is replaced by other foods, and is consistent with recommendations of the IOM.

**Are lactose-reduced and lactose-free milk allowed? Is medical documentation required for participants to receive lactose-reduced and lactose-free milk?**

These milks are allowed without medical documentation.

**Are soy-based beverages that meet the nutrient standards identified in the rule available in the marketplace?**

FNS is aware of at least one soy-based beverage in the marketplace that meets the requirements, and anticipates that the marketplace will respond with additional products. To the extent that the marketplace doesn't respond with additional products, other options, such as tofu, are available for participants.

**Why wasn't yogurt included in the new food packages as recommended by the IOM?**

It is important that revisions to the WIC food packages be cost neutral to protect the program's ability to serve the greatest number of eligible women, infants, and children. Therefore, the Department was unable to offer yogurt in the WIC food packages.

**In addition to fresh, are canned and frozen fruits and vegetables allowed?**

Yes. Canned and frozen fruits and vegetables are allowed. Dried fruits and vegetables are also allowed in food packages for women.

## **How do manufacturers get products approved?**

Procedures for determining WIC-eligibility of a food and requesting that a food be added to a State's approved WIC food list remain the same and are described on the FNS website at [www.fns.usda.gov/wic/benefitsandservices/foodpkgevaluation.HTM](http://www.fns.usda.gov/wic/benefitsandservices/foodpkgevaluation.HTM)

## **Is there going to be a master list of all WIC-eligible foods?**

Although Federal regulations specify the minimum nutritional requirements for the WIC foods, State agencies have a considerable amount of latitude in determining which foods to include on State authorized foods lists. State agencies make such decisions based on participant acceptance, product distribution within a State, cost, and administrative feasibility. Because State agencies are required to identify WIC-eligible foods, which vary from State to State, there is no consolidated list available. Due to the large number of locally and regionally available foods, including store brands and generics, and the frequent changes in formulation of foods by manufacturers, it is administratively difficult to maintain a national list of all possible WIC-eligible foods.

## **I. IMPLEMENTATION OF THE NEW FOOD PACKAGES**

### **Categorical Tailoring**

**\* May State agencies categorically tailor the regulatory monthly maximum amounts of food in the current food packages as a means of moving toward the food package changes that will be implemented because of the new Food Package Rule?**

Under current WIC food package regulations, categorical tailoring of food packages, for nutrition reasons only, is authorized with FNS approval. In accordance with Section 246.10 of Federal WIC regulations and FNS Instruction 804-1, "WIC Program Food Package Design: Administrative Adjustments and Nutrition Tailoring," regulatory maximum quantities of WIC foods may be reduced, but only for sound nutrition reasons.

**\* May State agencies categorically tailor the regulatory monthly maximum amounts of food in the food packages as a means of cost savings for caseload management?**

No. Categorical tailoring of food packages can only be approved for nutrition reasons. Although reductions in the regulatory monthly maximum amounts of food made through categorical tailoring may result in a cost savings, reduction of the Federal regulatory quantities for other than nutrition reasons, even to accommodate anticipated or imminent food over-obligations, is **not** an acceptable caseload management strategy.

**\* Does the ability to categorically tailor a food package end when the new food package regulations become effective on February 4, 2008?**

The new WIC food package regulations (72 FR 68966) become effective February 4, 2008, and State agencies must be in compliance with the new provisions no later than August 5, 2009. During the 18-month phase-in period for the new provisions, State agencies are required to issue food benefits based on **either** the new food packages or current food packages but may not combine the two. State agencies may phase in the new food packages on a participant category basis only, but may not “piecemeal” a food package based on combinations of the new and current regulations. Once implemented, the new food package must be issued statewide. Under the new WIC food package regulations, categorical tailoring is no longer authorized, i.e., the regulatory quantities of foods must be provided in full. Therefore, once the new food package is implemented, State agencies may not categorically tailor the amounts.

## **II. FARMERS AND FARMERS’ MARKETS**

**\* May a State agency authorize a farmer to accept the cash-value voucher if the State agency does not currently administer the WIC Farmers’ Market Nutrition Program (FMNP)?**

Yes, any WIC State agency has the option to authorize farmers at farmers’ markets to accept the cash-value voucher. The interim rule adds a new 7 CFR 246.12(v) that specifies the requirements regarding the authorization of farmers at farmers’ markets. However, the interim rule requirements were designed to build on an FMNP infrastructure that already exists.

**\* If a State agency authorizes farmers’ markets to accept WIC cash-value vouchers, do the farmers need to be included in the TIP report?**

According to WIC Program definitions, farmers are not vendors and therefore would not need to be included in the TIP report.

**\* Are authorized farmers included in the pool of vendors that must have compliance buys?**

No. On page 68971 of the December 6<sup>th</sup> interim rule, the preamble states “The farmers may also be excluded from the WIC monitoring requirements provided they are included in the sample of farmers upon which the FMNP monitoring requirement is drawn.” Under the FMNP, State agencies must do on-site reviews of a minimum of 10 percent of farmers and 10 percent of farmers’ markets, which includes those farmers and markets identified as being the highest risk.

**\* If we authorize farmers to accept the F&V benefit, will we need to track their redemptions via peer group like other vendors?**

The peer group requirements do not apply to farmers. Further, State agencies do not need to track the cash-value voucher redemptions of vendors or farmers to apply maximum allowable reimbursement levels per peer group.

### **III. CASH-VALUE VOUCHER**

**\* May a participant pay the difference when the purchase of allowable fruits and vegetables exceeds the value of the fruit and vegetable voucher?**

This is a State option. However, because it may be difficult to accurately estimate the exact purchase price of the fruit and vegetable selections, particularly when fresh and canned or frozen items are combined in one purchase, FNS recommends that participants be allowed to pay the difference when the purchase price exceeds the value of the voucher. FNS believes that this promotes increased consumption of fruits and vegetables because participants would be more likely to use the full cash value, rather than partially redeem the voucher for fear of exceeding its cash value. Participants may not, however, be given cash or credit for any unused portion of the voucher.

**\* CFR 246.12(h)(3)(v) requires that vendors ensure the purchase price is entered on the cash value voucher, either by the checker or the participant. Is this necessary if the voucher is pre-printed with a dollar amount?**

Yes. A purchase price is needed even if the cash-value voucher is for a fixed dollar amount, since the actual purchase price may be less than the fixed dollar amount of the cash-value voucher.

### **IV. FRUITS AND VEGETABLES**

**\* Can a State agency authorize only fresh fruits and vegetables?**

Yes. However, if the State agency chooses to only authorize fresh fruits and vegetables it must assure that such a decision would not adversely impact participants, such as situations where droughts limit availability of produce and homeless individuals who may have no ability to properly store fresh produce. The State agency must also consider the impact such a decision would have on small vendors.

**\* Can a State agency authorize only processed fruits and vegetables?**

No. The IOM recommended fresh produce issued through cash-value vouchers. At the State agency's option, processed fruits and vegetables (canned and frozen) may be substituted when fresh produce is limited or to accommodate participants who prefer processed forms. For example, the State agency may establish a different minimum stock and variety requirement for small vendors versus larger vendors that allows small vendors to meet the requirement by solely stocking processed fruits and vegetables.

**\* Do States have the authority to selectively choose which fruits or vegetables are available to WIC participants?**

No. The cash-value voucher may be redeemed for any eligible fruit and vegetable (refer to Table 4 of §246.10(e)(12) and its footnotes). States may not impose further restrictions on eligible fruit and vegetables.

**\* Are State agencies allowed to disallow the cut fresh fruit or vegetables, since Table 4 of the interim rule says "whole or cut"?**

No. "Whole or cut" refers to the minimum requirement/specification of the fruit/vegetable, not the State's ability to disallow one or the other. State agencies may not disallow cut fresh fruit or vegetables, except for those available for purchase on salad bars and party trays (refer to Table 4 of §246.10(e)(12) and its footnotes). The purpose of the cash-value voucher is to allow participants to choose among a variety of fruits and vegetables, with few restrictions.

**\* Are State agencies authorized to disallow bagged lettuce or salad greens?**

No.

**\* Are frozen beans (e.g., lima, black beans, kidney beans) allowed?**

Yes, if purchased with the cash-value voucher.

**\* Is there a list of the various names/types of white potatoes that are excluded?**

No, FNS does not have such a list. Only sweet potatoes and yams are allowed. All other potatoes are not allowed.



**\* Are the following allowed?**

<b>Canned hominy</b> (without added sugar, fats, oils)	Yes
<b>Canned tomato sauce and tomato paste</b> (without added sugar, fats, oils)	Yes
<b>White and red yams</b> (in addition to orange)	Yes
<b>Mixed vegetables containing beans</b>	Yes
<b>Mixed vegetables containing potato</b>	No
<b>Dried white potatoes</b>	No
<b>Mixed vegetables containing noodles, nuts or sauce packets</b>	No

## **V. MILK AND MILK ALTERNATIVES**

### **Cheese Substitution**

**\* With the new rule, children and women participants can receive up to one pound of cheese as a substitute for milk. If we offer cheese, this will result in a "dangling quart" for each of the food packages. Can State agencies drop the “dangling” quart?**

No. The WIC benefit to participants is the full authorized amount; therefore, State agencies may not “drop the dangling quart” of milk. If a State agency chooses to offer cheese as a substitute for 3 quarts of milk, then they **must** provide the remaining quart of milk (or other authorized milk or milk alternative such as dried milk, soy-based beverage, tofu, etc.) to fulfill the maximum allowance in the food package. In addition, participants should be provided nutrition education about the importance of milk (and/or fluid milk alternatives), in the quantities provided by WIC, in the participant’s diet.

The new foods and the new quantities of food are intended to deliver priority nutrients to participants to meet their supplemental nutrition needs; therefore, food packages need to be offered in full and may not be categorically tailored as in the past.

### **Tofu**

**\* Is calcium chloride considered a calcium salt? Products with calcium salts seem to contain less calcium than those with calcium sulfate.**

Yes, calcium chloride is considered a calcium salt.

### Common types of calcium salts found in tofu

Calcium sulfate (gypsum)  
Calcium citrate  
Calcium chloride  
Tricalcium phosphate

Even when these calcium salts are on the ingredient list, the amount of calcium in tofu varies from brand to brand and even within a brand, depending on the type of tofu produced (firm, soft, etc.)

In choosing the brands and types of calcium-set tofu to include on a State food list, read the label to choose, if possible, the tofu with the highest amount of calcium. The % Daily Value (DV) is a general guide to help determine if a food is high or low in a nutrient—5% or less is low, 20% or more is high.

FNS has reviewed a number of tofu labels and found that certain brands (Nasoya, White Wave, Soyboy) make a variety of tofu with anywhere from 10-30% of the DV for calcium.

Note: Nigari (primarily consisting of magnesium chloride) and gluconolactone are also used to process tofu, but they are not sources of calcium. Without an added calcium salt, these products have small or negligible amounts of calcium and, therefore, are not authorized.

## **VI. JUICE**

**\* For children, the juice requirement is 128 ounces. Since 12-ounce frozen (48 ounces reconstituted) and 46 ounce cans of single strength juice do not divide evenly into 128 ounces, can a State agency round down?**

The State agency must ensure that the maximum juice allowance is provided. Therefore, they may not round up or round down. The State agency must use the appropriate physical form to achieve the maximum:

Food Package IV: Two 64-ounce containers single strength juice

Food Package V and VII: Three cans 11.5/12-ounce shelf stable or frozen (48 ounces reconstituted)

Food Package VI: Two cans 11.5/12-ounce shelf stable or frozen (48 ounces reconstituted).

## VII. MISCELLANEOUS

**\* 246.10(b)(2)(B) states "Make available to participants more than one food from each WIC food category except for the categories of peanut butter and eggs, and any of the WIC-eligible fruits and vegetables (fresh or processed) in each authorized food package as listed in paragraph (e) of this section." What is the purpose of this provision?**

Current WIC regulations require State agencies to make available at least one food from each food category. This provision was to ensure that all food categories were offered, i.e., a State couldn't decide not to offer milk. The interim rule requires that State agencies make available to participants more than one food from each food category. The purpose of this provision is to implement the IOM's recommendation that State agencies allow as much variety and choice from the authorized foods as is feasible considering cost constraints and availability. Providing more variety and choice will accommodate the diverse needs of WIC participants, including different ethnic or cultural needs. **The provision should not be interpreted to mean that State agencies should limit the number of foods within a category.**